



Kathy Keolker-Wheeler, Mayor

# CITY OF RENTON

Planning/Building/Public Works Department

Gregg Zimmerman P.E., Administrator

August 18, 2005

Bill Moore  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Department of Ecology  
Water Quality Program

AUG 22 2005

**SUBJECT: Ecology Preliminary Draft NPDES Phase II Municipal Stormwater Permit – Review Comments**

Dear Mr. Moore:

The City of Renton would like to express our thanks for the Department of Ecology's (DOE) continued efforts into drafting requirements for the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Stormwater Permit.

The City of Renton would like to underscore that we feel strongly about having a Phase II permit that offers us legal protection against third-party action in cases in which the City is in compliance with permit conditions, and helps us to reasonably meet our environmental stewardship responsibilities. The City would like to receive a timely permit issuance with mutually acceptable solutions to the following major concerns:

1. Monitoring and Assessment of Best Management Practices (BMPs) for Post Construction

The Draft NPDES permit requires the City of Renton and other MS4s to follow Ecology's Stormwater Guidance Manual, apply BMPs to the Maximum Extent Practicable (MEP), use Ecology's approved list of BMPs and develop a monitoring plan for Ecology's BMPs within 4 years from permit issuance to prove their effectiveness in improving water quality and protecting beneficial uses. Ecology must consider that the City will be using DOE's approved list of BMPs, but implementing a BMP monitoring program that will duplicate other MS4s programs seems to be an inefficient method. This will lead to varying approaches being used by the jurisdictions, yielding data that will not be uniform or reliable. We believe that the DOE should instead fund and implement a BMP monitoring program that would be uniform across the jurisdictions.

This will insure that the monitoring program will provide reliable data that will not be invalidated by differing procedures and methods used across jurisdictional boundaries.

2. Monitoring TMDL for 303d EPA approved water bodies

The monitoring outline requirements as presently written in the Draft Permit is too broad and could require the measurement of many chemical and physical parameters that will not provide an environmental effectiveness determination. Renton recommends that monitoring be subjected to DOE 303d listed water bodies and their monitoring constituents at the testing frequency required by the 303d list only for water bodies where TMDL's have been approved. The general statement provided within the Permit is too broad for monitoring and can be scrutinized by third party groups looking to place liability even for parameters outside of the 303d list.



3. Appendix 1 inclusion into the DOE minimum requirements of the MS4 Permit

Appendix 1 has been extracted straight from the Ecology manual without text modifications to accommodate changes within the Permit, because numerous references point to different sections of the Ecology Stormwater Manual besides Appendix 1. As written, the Permit requires the adoption of the 2005 DOE Stormwater Manual. In addition, there is a 1 acre or more threshold requiring the use of Appendix 1, but within Appendix 1 various figures need to be modified to include this 1 acre threshold. See Figure 2.2 and 2.3. Does the requirement prevent a jurisdiction from adopting an alternative approved manual (i.e. 2005 KCSWD Manual) or from developing an equivalent alternative manual?

4. "Audit" type of review for SMP Reports

We believe each SWMP/annual report should be reviewed by Ecology to determine compliance with the approved permit conditions. This review should result in a written determination that could be used by a compliant city to respond to 3<sup>rd</sup> party claims or lawsuits.

5. Pre-developed forested condition

The City requests that the Ecology Stormwater Manual's 'forested' pre-developed condition requirement not be applied to urban downtown cores. Such a condition is too stringent for previously developed urban areas, and could result in the need for massive facilities in constrained spaces. We are concerned about costs, practicality, and even potential "takings" actions, if regulations are found to be unduly onerous or expensive. In urban areas, pre-developed conditions should more closely conform to actual conditions at the site.

6. Inspection and level of detail reporting for annual reports

Inspections within Special Conditions S7, Requirement #4, b, v, line 38 and S7, #4, c, I, line 27 states that "all sites" must be inspected by a qualified personnel (staff or qualified contractor). The City of Renton would like language in this section of the Permit clarifying that this inspection requirement is for current construction and not for annual inspections after a project is complete.

7. Designing a program to meet 100% of target audience

100% compliance is impossible to achieve. Ecology must define who to target on a specific list and have it be within MEP without placing an undue burden on the jurisdictional agency.

8. Timing of Phase II Implementation

The Draft Permit requires many deadlines to be met within the next five years of the Permit, starting in March 2006. These deadlines will require the City to come up with additional funds and probably hire staffing to meet the Permit deadlines. The funds and/or FTEs will require time and effort to approve through Management and Council review prior to commencing work for the various milestone deadlines. Some milestones as established by the present Draft Permit are to be submitted to Ecology as quickly as 90 days and 180 days, and some are to be established within the last year of the Permit. The City has reviewed the various timing and reporting requirements, and we see the need for considerably more time due to the City's budgeting concerns. The various submittal/timing requirements are

unattainable since the Permit requirements will not be final until March 2006, after our 2006 Budget has been approved. We suggest delaying any requirements for an additional year after the Permit has been issued to allow jurisdictions time to evaluate program needs and establish budgets needed to comply with the permit requirements.

Listed above are comments the City of Renton is submitting to Ecology for re-consideration and refinement of the Permit. The City also endorses the letter written by AWC that was sent to Ecology in July of 2005.

We are very concerned the Permit, as proposed by Ecology, establishes requirements that far exceed the federal minimum standards, which will make compliance with the Permit conditions difficult. At the same time, the Permit does not offer protection from liability for compliant jurisdictions. We suggest that CTED or other appropriate state agency be asked to weigh in on whether the adoption of a NPDES Phase II permit that is for more stringent than is required by the Federal Clean Water Act would create an economic disadvantage for the State of Washington by discouraging economic development.

The City wishes to express our appreciation for your efforts and looks forward to participating in bringing the Permit to its final form. If you have any questions, please contact me at (425) 430-7311.

Sincerely,



Gregg Zimmerman, P.E.  
Administrator

cc: Lys Hornsby, P.E., Utility Systems Director  
Ron Straka, P.E., Surface Water Utility Supervisor  
Steve Lee, P.E., Surface Water Utility Engineer